

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

CARLOS CEJA RODRIGUEZ,

Petitioner,

v.

A. NEIL CLARK,

Respondent.

CASE NO. C07-1209-RAJ-MJB

REPORT AND RECOMMENDATION

I. INTRODUCTION AND SUMMARY CONCLUSION

Petitioner Carlos Ceja Rodriguez, proceeding pro se, has filed a Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, challenging his detention by the U.S. Immigration and Customs Enforcement (“ICE”). (Dkt. #5). Respondent has filed a Return Memorandum and Motion to Dismiss, arguing that petitioner is lawfully detained under the Attorney General’s discretion pursuant to Section 241 of the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1231, because he is subject to a final order of removal. (Dkt. #12).

Having carefully reviewed the entire record, I recommend that petitioner’s habeas petition (Dkt. #5) be DENIED and that respondent’s motion to dismiss (Dkt. #12) be GRANTED.

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1 appeared for a master calendar hearing before an Immigration Judge (“IJ”), and acknowledged  
2 receipt of the NTA. (Dkt. #13 at L75). The IJ advised petitioner of the charges against him and  
3 of the consequences of failing to appear for an immigration hearing. *Id.* The IJ personally served  
4 petitioner with a Notice of Hearing set for December 5, 2000. *Id.* On December 5, 2000,  
5 however, petitioner failed to appear for his immigration hearing and the IJ ordered him removed  
6 *in absentia*. (Dkt. #13 at R80).

7         On March 27, 2007, ICE arrested petitioner at his place of employment in Hermiston,  
8 Oregon. (Dkt. #13 at R85). On April 3, 2007, petitioner filed a motion to reopen his removal  
9 proceedings with the Immigration Court, claiming that he never received the NTA or Notice of  
10 the December 5, 2000, immigration hearing. (Dkt. #13 at L63). The IJ denied petitioner’s  
11 motion to reopen on April 20, 2007. (Dkt. #13 at L73-75). Petitioner appealed the IJ’s denial of  
12 his motion to reopen to the Board of Immigration Appeals (“BIA”), who dismissed the appeal on  
13 July 16, 2007. (Dkt. #12, Ex. A).

14         On August 8, 2007, petitioner filed a Petition for Review of the BIA’s denial of his  
15 motion to reopen with the Ninth Circuit Court of Appeals, along with a motion for stay of  
16 removal. *Carlos Rodriguez Ceja v. Mukasey*, No. 07-73110 (filed Aug. 8, 2007). Under Ninth  
17 Circuit General Order 6.4(c)(1)(3), this caused a temporary stay to automatically issue. *Id.* The  
18 Government filed its brief in opposition to the motion for stay on August 31, 2007. *Id.*

19         On August 20 and 28, 2007, petitioner also filed additional motions to reopen with the  
20 Immigration Court and the BIA. (Dkt. #12, Exs. B, C). The BIA dismissed the second motion to  
21 reopen on September 20, 2007. (Dkt. #12, Ex. D). The Immigration Court motion to reopen  
22 remains pending.  
23

24         On January 14, 2008, the Ninth Circuit denied petitioner’s motion for stay of removal.

1 *Carlos Rodriguez Ceja v. Mukasey*, No. 07-73110 (filed Aug. 8. 2007). Petitioner's Petition for  
2 Review remains pending in the Ninth Circuit.

### 3 III. DISCUSSION

4 Section 241(a)(1)(A) of the INA states that "[e]xcept as otherwise provided in this  
5 section, when an alien is ordered removed, the Attorney General shall removed the alien from the  
6 United States within a period of 90 days (in this section referred to as the 'removal period')." *INA* § 241(a)(1)(A), 8 U.S.C. § 1231(a)(1)(A). *See also Thai v. Ashcroft*, 366 F.3d 790, 793 (9<sup>th</sup>  
7 Cir. 2004) ("When a final order of removal has been entered against an alien, the Government must  
8 facilitate that alien's removal within a 90-day 'removal period.'"). The removal period begins on  
9 the latest of the following:  
10

11 (i) The date the order of removal becomes administratively final.

12 (ii) If the removal order is judicially reviewed and if a court orders a stay of the  
13 removal of the alien, the date of the court's final order.

14 (iii) If the alien is detained or confined (except under an immigration process), the  
15 date the alien is released from detention or confinement.

16 8 U.S.C. § 1231(a)(1)(B)(emphasis added); *see also Khotessouvan v. Morones*, 386 F.3d 1298,  
17 1300 n.3 (9<sup>th</sup> Cir. 2004) (stating that the 90-day removal period commences on "the date the  
18 order of removal becomes final; the date a reviewing court lifts its stay following review and  
19 approval of the order of removal; or the date the alien ordered removed is released from non-  
20 immigration related confinement."). During this removal period, continued detention is  
21 required. *INA* § 241(a)(2), 8 U.S.C. § 1231(a)(2) ("During the removal period, the Attorney  
22 General shall detain the alien."). Where removal cannot be accomplished within the 90-day  
23 removal period, detention beyond the removal period is authorized by *INA* § 241(a)(6), 8 U.S.C.  
24 § 1231(a)(6); *see Zadvydas v. Davis*, 533 U.S. 678, 682, 121 S. Ct. 2491, 150 L. Ed. 2d 653

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1 (2001). In *Zadvydas*, the Supreme Court determined that the Government is entitled to a  
2 presumptively reasonable period of detention of six months to bring about the alien's removal  
3 from the United States. *Zadvydas*, 533 U.S. at 701. After this six month period, the alien is  
4 eligible for conditional release upon demonstrating that there is "no significant likelihood of  
5 removal in the reasonably foreseeable future." *Id.* The petitioner has the burden of coming  
6 forward with "good reason to believe there is no significant likelihood of removal in the  
7 reasonably foreseeable future." *Id.* If the petitioner meets this burden, the government must  
8 produce sufficient evidence to rebut petitioner's showing. *Id.*

9 In the present case, the Ninth Circuit denied petitioner's motion for stay of removal on  
10 January 14, 2008, thereby commencing the removal period. *See* INA § 241(a)(1)(B)(ii), 8 U.S.C.  
11 § 1231(a)(1)(B)(ii). Thus, petitioner's 90-day removal period will expire on or about April 14,  
12 2008, and the six month presumptively reasonable period will expire on or about July 14, 2008.  
13 Accordingly, the habeas petition should be denied as petitioner's detention is lawful, and  
14 authorized by statute.  
15

#### 16 IV. CONCLUSION

17 For the foregoing reasons, I recommend that respondent's motion to dismiss be granted,  
18 and that this action be dismissed with prejudice. A proposed Order accompanies this Report and  
19 Recommendation.

20 DATED this 22<sup>nd</sup> day of January, 2008.

21 

22 MONICA J. BENTON  
23 United States Magistrate Judge  
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